In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 13247 of 2007
Date of decision: September 6, 2007

M/s Raizo Plasto Private Limited.

---Petitioner

Vs.

Union of India and others

---Respondents

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

***

Present: Mr.Pawan Kumar Pahwa, Advocate,
for the petitioner.

***

M.M.KUMAR J.

Prayer in this petition filed under Article 226 of the Constitution is for quashing order dated 27.4.2007 (P-6) passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for brevity 'the Tribunal') partially accepting the prayer of the petitioner for waiving of pre-deposit excise duties amounting to Rs. 41,65,284/-. The Tribunal has taken into consideration the financial position of the petitioner and have directed the petitioner to deposit a sum of Rs. 15 lakhs. The petitioner has also paid a sum of Rs. 5 lakhs as is evident from the perusal of the order dated 3.8.2007 passed in Excise Misc. Application No. 611 of 2007 (P-10). The appeal of the petitioner being Appeal No. 719-720 of 2007 is pending

for consideration on merit. It is appropriate to mention that in the Order-in Original passed by the Commissioner on 17.11.2006, a demand of central excise duty amounting to Rs. 41,65,284/- has been confirmed under Section 11A (1) of the Central Excise Act, 1944 and the extended period of limitation as per proviso to Section 11A(1) has been invoked. A penalty of equal amount under erstwhile Rule 173 Q of the Central Excise Rules, 1944 read with Section 11AC of the Central Excise Act, 1944 has also been imposed. A separate penalty of Rs. 10 lakhs has further been imposed upon Sh. Surinder Raizada, Director of the company under Rule 209 A of 1944 Rules.

We have heard learned counsel for the petitioner at some length and find that the Tribunal has exercised discretion of waiving pre-deposit on duty and penalties by keeping in view the findings that the goods were removed without payment of duty. It has rightly been held by the Tribunal that total waiver of duty cannot be granted. The Tribunal has taken into consideration the financial hardship and over-lapping nature of entries in the private record in waiving payment of duty partially and has required the petitioner to pay Rs. 15Lakhs by waiving pre-deposit of remaining amount of duties and penalties. It is further appropriate to mention here that when the petitioner filed another application for modification of order dated 27.4.2007 (P-6) that application was also dismissed observing that there was no change of circumstances warranting any modification. It has also been noticed in the aforementioned order that a sum of Rs. 5Lakhs had already been deposited and the matter was adjourned to 14.9.2007 for reporting compliance. Therefore, we do not find any room for interference

in the orders passed by the Tribunal.

The writ petition is wholly without merit and the same is accordingly dismissed.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 6, 2007
paramjit